



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 06686-99

5 May 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: **LA [REDACTED] JR., CHC, USNR [REDACTED]**  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 14 Oct 99 w/attachments  
(2) PERS-311 memo dtd 2 Feb 00  
(3) PERS-61 memo dtd 13 Mar 00  
(4) PERS-86 memo dtd 13 Apr 00  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 18 May 1996 to 31 January 1997 and 31 January 1997 to 1 October 1997 with all related correspondence, copies of which are at Tabs A and B. Petitioner further requested removal of his failure of selection for promotion before the Fiscal Year 00 Staff Lieutenant Commander Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Messrs. Kastner, Lightle and Whitener, reviewed Petitioner's allegations of error and injustice on 4 May 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The contested fitness report ending 1 October 1997 was in Petitioner's record when he failed of selection for promotion, but not the report ending 31 January 1997. Both are on file now. The report ending 1 October 1997 assigned him a "Promotion Recommendation" of

"Progressing" (second worst), and the narrative included the following: "With continued commitment [sic] and improvement in staff work and communication, [Petitioner] will progress toward promotion to Lieutenant Commander."

c. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has commented to the effect that Petitioner does not prove the contested fitness reports to be unjust or in error and that his record should remain unchanged. However, they could not determine if his allegation that the reporting senior displayed religious and denominational discrimination against him had merit. They recommended that the case be forwarded to PERS-61, the NPC office having cognizance over equal opportunity matters, and they stated they had no objection to removing the fitness reports in question should this allegation of discrimination have merit. They further recommended that the case be forwarded to PERS-85, the NPC office having cognizance over active duty officer promotions.

d. In correspondence attached as enclosure (3), PERS-61 recommended that both contested fitness reports, as well as Petitioner's failure of selection for promotion, be removed. They concluded that there is religious bias in the report ending 31 January 1997, and that the second report "is a follow-on of the same bias."

e. In correspondence attached as enclosure (4), PERS-86, the NPC office having cognizance over Naval Reserve officer promotions, commented to the effect that they concurred with the comments and recommendations of PERS-61. While Petitioner is a Naval Reserve officer, his failure of selection was by an active duty promotion board, rather than a reserve promotion board. Therefore, PERS-85, rather than PERS-86, is the NPC office that would be expected to have the greatest expertise in assessing whether removal of the contested fitness reports would warrant removing Petitioner's failure of selection.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (3) and (4), the Board finds the existence of an injustice warranting full relief. Without input from PERS-85, they are satisfied that the contested fitness report ending 1 October 1997, which was in Petitioner's record when he failed of selection, is damaging enough that it would have denied him fair consideration for promotion. In view of the above, the Board directs the following corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness reports and related material:

Date of Report	Reporting Senior	Period of Report From To
97Jan30	[REDACTED] IN	96May18 97Jan31
97Sep26	[REDACTED] USN	97Jan31 97Oct01

b. That there be inserted in Petitioner's naval record ONE memorandum in place of the removed reports, containing appropriate identifying data; that the memorandum state that the portion of Petitioner's fitness report record for 18 May 1996 to 1 October 1997 has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the removed material.

c. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
for W. DEAN PFEIFFER  
Executive Director



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

6656-99

1610  
PERS-311  
2 February 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LT [REDACTED] R., CHC, USNR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness reports for the period 18 May 1996 to 31 January 1997, 31 January 1997 to 1 October 1997, and removal of failure of selection.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the original fitness report for the period 31 January 1997 to 1 October 1997 to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member's statement and first endorsement is reflected in his record. The fitness report for the period 18 May 1996 to 31 January 1997 has not been received by PERS-311. The member provided a copy with his petition and it has been placed in his digitized record. The member included a copy of his statement and first endorsement with his petition and was found suitable for filing and we are in the process of placing it in the member's digitized record.

b. The member alleges the reporting senior made inappropriate and discriminatory comments, remarks, and openly displayed religious and denominational discrimination. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he/she must provide evidence to support the claim. I do not believe that [REDACTED] did so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the reports lacked rational support.

c. We cannot comment on why the reporting senior waited so long before he endorsed the member's statement to his fitness reports.

d. Lieutenant [REDACTED] the fitness reports in question was he sole reason for failure of selection to Lieutenant Commander. Failure of selection is not sufficient reason to remove a fitness report.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

4. We cannot determine if discrimination against the member has merit. We recommend the member's petition be forwarded to the Director, Equal Opportunity Division (NPC-61) for comments. Should the member's allegation have merit, we have no objections to removal of the fitness reports in question and to the Director, Active Officer Promotion, Appointments, and Enlisted Advancement Division (NPC-85) for comments on the member's request for removal of failure of selection.

[REDACTED]  
Head, Performance  
Evaluation Branch



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

6686-99

1610  
PERS-61/037  
13 Mar 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
LIEUTENANT [REDACTED] CHC, USNR,  
[REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 14 FEB 00  
(b) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 06686-99

1. Reference (a) requested an advisory opinion in response to Lieutenant [REDACTED] request to remove his fitness reports for the period 18 May 1996 to 31 January 1997 and 31 January 1997 to 1 October 1997 from his official service record. He also requested that his 1XFOS to lieutenant commander be removed from his record. Enclosure (1) is returned.

2. Lieutenant [REDACTED] alleges that his commanding officer displayed religious and denominational discrimination in Block 41 when he wrote, "Liturgical style does not have broad appeal". Additionally the CO wrote, "A good man; however, I believe Richard needs to re-evaluate his future in the Navy". He also believes that the 2.0 marks do not support the write-up in Block 41. Lieutenant [REDACTED] also alleges that his fitness report and his rebuttal for the period ending 31 January 1997 had not been forwarded to the Bureau in a timely manner in accordance with BUPERSINST 1616.10.

3. There is evidence to support his allegation that the fitness report and rebuttal had not been submitted appropriately. He provides a copy of a PERS-311 memo dated 26 August 1999. Also, a PERS-311 memo dated 2 February 2000 stated that the fitness report had not been received.

4. I do not feel that the write-ups in Block 41 sufficiently justify the 2.0 marks on both reports. Additionally, the CO recommends him for command chaplain on the 31 January 1997 fitness report, which appears to be contrary to his remark "to re-evaluate his future in the Navy".

6686-79

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF  
LIEUTENANT [REDACTED] JR., CHC, USNR,  
[REDACTED]

5. It is my opinion, from the information provided, that there is religious bias per reference (b) in the report ending 31 January 1997. I feel that the second report is a follow-on of that same bias, however, it is not as evident in the write-up in Block 41. I therefore recommend that both fitness reports be removed from his service record as well as the 1XFOS.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Director, Professional  
Relationships Division  
(PERS-61)





**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

6686-99

5420  
PERS-86

**13 APR 2000**

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST ICO LIEUTENANT [REDACTED]  
[REDACTED]

Encl: (1) BCNR File 06686-99 w/Service Record

1. We are returning enclosure (1) with the following observations and recommendation that [REDACTED] petition for removal of his original fitness reports for the periods 18 May 1996 to 31 January 1997, 31 January 1997 to 1 October 1997 be granted. We also recommend that the request for removal of the one time failure to select be granted.
2. [REDACTED] alleges that his commanding officer showed discrimination in his comments. While the comments themselves are not necessarily discriminatory, we find that they are not consistent with 2.0 marks on both reports. The comments and 2.0 marks are also not consistent with command recommendations for command chaplain. We concur with PERS-61 and their evaluation of the comments.
3. [REDACTED] also alleges that his rebuttal statements were not properly forwarded with the two reports in question and therefore were not with these fitness reports when he was before the board. The dates stamped on the various documents tend to support [REDACTED] allegation. It would appear that [REDACTED] rebuttal statements were not handled timely or professionally by the command in accordance with BUPERSINST 1616.10.
4. We concur with PERS-61 that there is enough evidence to substantiate bias against [REDACTED]. We recommend approval of

6686-99

Subj: REQUEST ICO LIEUTENANT [REDACTED]  
[REDACTED]

LT [REDACTED] request that both fitness reports be removed from his record as well as removal of the one time failure to select.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Director, Reserve Officer  
Promotions, Appointments, and  
Enlisted Advancement Division